IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 240 OF 1992

P. Kasam Ahamad ..Appellant

versus

The State of Maharashtra ..Respondents

Mr. S. Ingawane with Mr. R. P. Lote for the Appellant.

Mr. S. N. Gawade, AGP for the Respondents - State.

CORAM : D. G. DESHPANDE,J.

DATE : 25TH OCTOBER,2005

ORAL ORDER :

1. Heard counsel for the Appellant and the learned AGP for the Respondents - State.

2. Appellant is the claimant whose property was acquired by the State - Respondents. The property included 455 sq. meters of land with structure and the structure admeasuring 4,822 sq. ft. The SLAO

awarded compensation at Rs.5.40 paise per sq. meter for the land and Rs.3,60,130/- for the structure. Feeling aggrieved, the claimant filed Reference under Section 18. The Reference Court doubled the compensation so far it related to land but refused to enhance the compensation for structure. Therefore, this Appeal.

3. Counsel for the appellant pointed out that the structure was a pucca structure in cement and brick. It was a huge structure admeasuring 4,822 sq. ft. The structure was abutting the main road i.e. within 30 feet distance. The claimant was earning rent and profit from his business. Initially the valuation by the Land Acquisition Officer was Rs.8,24,000/- but subsequently for no reason the Engineer of the CIDCO reduced valuation to Rs.3,60,130/-. According to the counsel for the appellant, there was no reason for reduction. The appellant has examined Expert Jeevan Kulkarni as his witness No.1. There is no effective cross examination and in any case when the price of the land is doubled by the Reference Court, there was no justification in refusing to enhance the compensation.

4. The learned AGP on the other hand contended that merely because the SLAO had initially valued the structure at Rs.8,24,000/-. Nothing prevented the SLAO from getting the property revalued and therefore when upon revaluation the structure was found to be worth Rs.3,60,130/-, then the trial court was not justified in refusing the claim for enhancement of the structure.

5. I find considerable force in the submissions made by the counsel for the appellant that if the Reference Court found the case to be fit for enhancement of compensation for land and made it Rs.11/- from Rs.5.40 paise, then there was no justification for the Reference court refusing to enhance the compensation for the structure. Admittedly the structure is huge, it is abutting road, it is in brick cement and claimant was having income by way of rent from the structure. Even if his income from the business is not considered, it was a proper case for enhancement of the compensation regarding the structure.

6. However, as rightly argued by the learned

AGP merely because the SLAO valued at Rs.8,24,000/-, the court was not bound to accept the same but in any case looking to the fact that the structure was constructed in 1964 and the acquisition is of 1967, Rs.100/- per sq. ft. for the structure would be proper compensation in this case, that comes to Rs.4,82,020/- to make it round figure at Rs.5,00,000/- would be proper. Therefore, this Appeal is required to be allowed and hence the appeal. Therefore, order:

ORDER

. Appeal is allowed.

. Order of the Reference Court rejecting the enhancement of compensation to the structure was, set aside. The appellant will be entitled to enhanced compensation of Rs.1,39,870/- with solatium and interest, in addition to what is awarded to him. Rest of the Order to remain as it is.

25.10.2005 (D.G. DESHPANDE, J.)